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PAE-AO 243 (Rev. 10/09)

14-CV-1870

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

United States District Court	District	EASTERN DISTRICT OF PENNSYLVANIA
Name (under which you were convicted): Felix Roman		Docket or Case No.: 2-02-CR-00361-JF-1
Place of Confinement: FCC, Coleman-Low		Prisoner No.: 55318-066
UNITED STATES OF AMERICA		Movant (include name under which convicted) FELIX ROMAN
V.		

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging: United States District Court, Eastern District of Pennsylvania

 (b) Criminal docket or case number (if you know): 2:02-CR-00361-JF-1
2. (a) Date of the judgment of conviction (if you know): April 16, 2003
 (b) Date of sentencing: April 16, 2003
3. Length of sentence: 262 months imprisonment
4. Nature of crime (all counts): Violation of Title 21 USC § 841(a)(1) & (b)(1)-(B), Five Grams or More of Crack Cocaine; and Title 21 USC § 841-(b)(1)(D), Possession of Marijuana.
5. (a) What was your plea? (Check one)
 (1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐
 (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?
6. If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☒

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7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒

8. Did you appeal from the judgment of conviction? Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: Court of Appeals for the Third Circuit

(b) Docket or case number (if you know): 03-2237

(c) Result: Affirmed

(d) Date of result (if you know): April 15, 2003

(e) Citation to the case (if you know): Unknown

(f) Grounds raised: Anders Brief Filed

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

(5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: U.S. District Court, Eastern District - Pennsylvania

(2) Docket or case number (if you know): 04-4801

- (3) Date of filing (if you know): October 31, 2004
- (4) Nature of the proceeding: 28 USC § 2255
- (5) Grounds raised: Career Offender, 851 Enhancement, Weapon Enhancement
- _____
- _____
- _____
- _____
- _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☒

(7) Result: Affirmed

(8) Date of result (if you know): August 18, 2005

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☒ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:
Appeal filed

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: COUNSEL WAS INEFFECTIVE IN FOR BEING INADEQUATE IN INVESTIGATION, PREPARATION AND, ALSO FOR PROVIDING MISADVICE TO MOVANT

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Movant repeatedly requested Counsel to investigate the facts of the State prior conviction used to classify him as a Career Offender (4B1.1). Counsel advised Movant that the 851 Enhancement and the two level Gun Enhancement would be the initial sentence and the Court could NOT sentence him more than 10 years(851) and 3 years Gun Enhancement with a total of 156 months imprisonment. Had Counsel investigated the State prior convictions, and prepared a defense to determine if Movant was a Career Offender at Sentencing on the 1995 conviction, the sentence exposure of 262 months that was imposed by the Court could have been less. Counsel provided bad advice at sentencing.

(b) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

- (2) If you did not raise this issue in your direct appeal, explain why: Counsel error

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: No appeal

GROUND TWO: COUNSEL'S FAILURE TO OBJECT TO THE FACTUAL ERRORS IN THE PSR MADE MOVANT'S GUILTY PLEA UNKNOWNLY AND INVOLUNTARY

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

During the plea process, before the change of plea hearing, Counsel assured Movant that he had negotiated a favorable plea and the Government was going to stipulate to its terms (Plea Trans., pg 4, ¶ 4-7 & pg 10-11). However, at Sentencing, Movant was classified as a Career Offender on a State (New Jersey) prior that was invalid, yet used to determine the Career Offender status. Not only was the prior declared invalid--Movant only served 162 days in jail inside the one-year, one-month requirement--but had Counsel objected to the factual errors in the PSR, where no objection was filed (Sent. Trans. pg 15, ¶ 2-8), the Court would have enforced the plea agreement that was negotiated and stipulated between Counsel and government.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Counsel error

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Counsel error

**COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING TO THE
CAREER OFFENDER GUIDELINE WHERE THE COURT
GROUND THREE: MISUNDERSTOOD IMPOSING A MINIMUM SENTENCE THAT
WAS REQUIRED BY LAW**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Counsel should have objected to the Court's discretion at Sentencing concerning the meaningless purpose that erroneously required such a severe sentence for five grams of crack cocaine, where the agreed terms of the Plea Agreement was never challenged by the government (at Sentencing) (Sent. Trans. pg 14, ¶ 16-22).

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Counsel error

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Counsel error

GROUND FOUR: COUNSEL FAILED TO OBJECT TO THE COURTS QUESTION OF WHETHER MOVANT IS A CAREER OFFENDER OR NOT

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Counsel somewhat raised a rebuttal to the Government's and the Court's determination on whether or not Movant classified as a Career Offender, after the Government and Court made their determination on this status (Sent. Trans. pg 12, ¶ 22-25 & pg 13, ¶ 1-25). Counsel based this theory on what the Government stated, then Counsel allowed the Court to determine the bases of the Career Offender status without making any objections to the Court's ruling. Counsel's inadequate performance prejudiced the Movant and deprived him of his Right to Effective Assistance of Counsel.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Counsel error

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Counsel error

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

No

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing: Allan L. Sodomsky

(b) At the arraignment and plea: Allan L. Sodomsky

(c) At the trial: Allan L. Sodomsky

(d) At sentencing: Allan L. Sodomsky

(e) On appeal: Allan L. Sodomsky

(f) In any post-conviction proceeding: Pro se

(g) On appeal from any ruling against you in a post-conviction proceeding: Pro se

16. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

17. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

AEDPA does not bar this application because Movant is challenging
the Federal laws of the Constitution and this Court was without
jurisdiction to impose such a sentence.

* 28 U.S.C. § 2255(f), provides that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: GRANT Movant's Constitutional Claim and REMOVE the Career Offender Enhancement.

or any other relief to which movant may be entitled.

N/A

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 3-24-14.
(month, date, year)

Executed (signed) on 3-24-14 (date)

Felix Roman

Signature of Movant

FILIX ROMAN, #55318-066
PRO SE PETITIONER

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

